

**MORGAN & MORGAN
COMPLEX LITIGATION GROUP**

Michael F. Ram (SBN 104805)
mram@forthepeople.com
Marie N. Appel (SBN 187483)
mappel@forthepeople.com
711 Van Ness Avenue, Suite 500
San Francisco, CA 94102
Telephone: (415) 358-6913
Facsimile: (415) 358-6293

Ra O. Amen (*Pro Hac Vice* application pending)
ramen@forthepeople.com
201 N. Franklin Street, 7th Floor
Tampa, Florida 33602
Telephone: (813) 223-5505
Facsimile: (813) 223-5402

*Counsel for Plaintiffs
and the Proposed Class*

NELSON & FRAENKEL LLP

Gretchen M. Nelson (SBN 112566)
gnelson@nflawfirm.com
Gabriel S. Barenfeld (SBN 224146)
gbarenfeld@nflawfirm.com
601 So. Figueroa Street, Suite 2050
Los Angeles, California 90017
Telephone: (213) 622-6469
Facsimile: (213) 622-6019

**STEWART, MITTLEMAN & O'ROURKE,
L.L.C.**

Mark D. Mittleman (*Pro Hac Vice* application pending)
mdm63105@aol.com
222 South Central Avenue, Suite 202
Saint Louis, Missouri 63105
Telephone: (314) 863-8484
Facsimile: (314) 863-5312

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

MARK ANGELES, JEFFREY ANGELES,
LINDA KELLY, TREVOR KELLY,
ELIZABETH MONTGOMERY, AND
RICHARD HENLEY MONTGOMERY as
individuals and on behalf of all other similarly
situated individuals and entities,

Plaintiffs,

v.

OMEGA FAMILY SERVICES LLC d/b/a
PRIME INSURANCE SOLUTIONS,

Defendant.

Case No.: **'21CV1753 W BGS**

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 **CLASS ACTION COMPLAINT**

2 Plaintiffs, Mark Angeles, Jeffrey Angeles, Linda Kelly, Trevor Kelly, Elizabeth Montgomery,
3 and Richard Henley Montgomery bring this Class Action Complaint individually and on behalf of all
4 other similarly situated individuals and entities against Omega Family Services, LLC d/b/a Prime
5 Insurance Solutions (“Omega Family Services”) and hereby state as follows:

6 **NATURE OF ACTION**

7
8 1. Plaintiffs assert this class action individually and on behalf of all other similarly situated
9 individuals and entities against Defendant for its involvement in a scheme where Plaintiffs and class
10 members were sold counterfeited and nonexistent “PregnancyCare” insurance policies, which purported
11 to provide surrogacy insurance to Plaintiffs and class members (which primarily include hopeful
12 parents) and their surrogate mothers for gestational surrogacy costs.

13 2. This class action seeks damages under various state and common law claims.

14 3. Defendant Omega Family Services is currently in bankruptcy proceedings before the
15 United States Bankruptcy Court Southern District of California.

16 4. Accordingly, Plaintiffs filed a motion for relief from the automatic stay, which was
17 subsequently granted. *See* United States Bankruptcy Court Southern District of California’s Order, *In Re*
18 *Omega Family Services, LLC*, Case No. 20-06121-LA7, DE 34, entered on September 12, 2021 (“Order
19 Granting Relief From Automatic Stay”) (attached as Ex. A).

20 5. Pursuant to the Order Granting Relief From Automatic Stay, Plaintiffs individually and
21 on behalf of all other similarly situated individuals and entities seek in damages only the proceeds of
22 Defendant’s Errors and Omissions insurance policy, issued by National Casualty Company, Policy
23 Number FNO0001738-VA-03-05.

24 **JURISDICTION AND VENUE**

25 6. This Court has federal subject matter jurisdiction over Plaintiffs’ federal claims pursuant
26 to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d), as the amount in controversy
27 exceeds the sum of \$5,000,000, exclusive of interest and costs, there are more than 100 putative class
28

1 members, and minimal diversity exists because many putative class members are citizens of a different
2 state than Defendant.

3 7. Venue is proper in this District pursuant to 18 U.S.C. § 1965(a) and 28 U.S.C. §
4 1391(b)(2) because Defendant conducts its affairs in this District and a substantial part of the events
5 giving rise to Plaintiffs' claims occurred in this District.

6 8. This Court has personal jurisdiction over Defendant as it is a California corporation, has
7 purposefully availed itself of the forum, has transacted business regularly in the forum, and because the
8 exercise of jurisdiction in this forum over Defendant would not offend traditional notions of fair play
9 and substantial justice.

10 **PARTIES**

11 9. Plaintiff Mark Angeles, an individual, is a California resident.

12 10. Plaintiff Jeffrey Angeles, an individual, is a California resident.

13 11. Plaintiff Linda Kelly, an individual, is a California resident.

14 12. Plaintiff Trevor Kelly, an individual, is a California resident.

15 13. Plaintiff Elizabeth Montgomery, an individual, is a Missouri resident.

16 14. Plaintiff Richard Henley Montgomery, an individual, is a Missouri resident.

17 15. Defendant Omega Family Services is a California limited liability company with a
18 principal place of business at 110 West A Street, Suite 1100, San Diego, CA 92101.

19 **BACKGROUND FACTS**

20 **The Scheme to Defraud Plaintiffs and Class Members**

21 16. Defendant is part of a nationwide scheme that resulted in the misappropriation and/or
22 theft of premium dollars from hopeful parents throughout the United States by selling counterfeited and
23 nonexistent "PregnancyCare insurance policies" (the "Counterfeited Policies"), which purport to provide
24 coverage for medical complications and delivery costs for pregnant gestational surrogates (the
25 "Scheme"). The "Counterfeited Policies" include all counterfeited and nonexistent "insurance policies"
26 sold to Plaintiffs and class members.
27
28

1 17. The Scheme involved supposed PregnancyCare insurance policies that purport to insure
2 over 700 hopeful parents, surrogate mothers, and gestational surrogacy service providers throughout the
3 United States.

4 **Plaintiffs and Class Members**

5 18. Plaintiffs Mark and Jeffrey Angeles are a married couple.

6 19. Plaintiffs Linda and Trevor Kelly are a married couple.

7 20. Plaintiffs Elizabeth Montgomery and Richard Henley Montgomery are a married couple.

8 21. Plaintiffs Mark and Jeffrey Angeles learned of PregnancyCare through their surrogacy
9 agency, Same Love Surrogacy LLC.

10 22. Plaintiffs Linda and Trevor Kelly learned of PregnancyCare through their surrogacy
11 agency, Surrogate Parenting Services.

12 23. Plaintiffs Elizabeth Montgomery and Richard Henley Montgomery learned of
13 PregnancyCare through their surrogacy agency, Pathways to Parenthood LLC.

14 24. “The Surrogacy Agencies” shall mean Same Love Surrogacy LLC, Surrogate Parenting
15 Services, and Pathways to Parenthood LLC.

16 25. Plaintiffs Mark and Jeffrey Angeles purchased a PregnancyCare insurance policy in or
17 about October of 2019 from Defendant.

18 26. Plaintiffs Linda and Trevor Kelly purchased a PregnancyCare insurance policy in or
19 about September of 2019 from Defendant.

20 27. Plaintiffs Elizabeth and Richard Henley Montgomery purchased a PregnancyCare
21 insurance policy in or about December 2019.

22 28. Upon information and belief, class members have paid considerable premiums for the
23 Counterfeited Policies.

24 29. Plaintiffs Mark and Jeffrey Angeles approximate that they paid more than \$14,850 in
25 premiums over the course of 11 months for non-existent and forged PregnancyCare “insurance
26 coverage.” Plaintiffs Mark and Jeffrey Angeles most recent premium payment was approximately
27 \$1,350.
28

1 30. Plaintiffs Linda and Trevor Kelly approximate that they paid \$16,600 in premiums and a
2 deposit over the course of 14 months for non-existent and forged PregnancyCare “insurance coverage.”
3 Plaintiff’s most recent premium payment was approximately \$1,150.

4 31. Plaintiffs Elizabeth and Richard Henley Montgomery approximate that they paid
5 approximately \$15,000 in premiums for non-existent and forged PregnancyCare “insurance coverage”.

6 32. Plaintiffs Mark and Jeffrey Angeles’ surrogate (whom the Counterfeited Policy
7 supposedly insured) gave birth to Plaintiffs Mark and Jeffrey Angeles’ daughter in August of 2020.

8 33. Plaintiffs Linda and Trevor Kelly’s surrogate (whom the Counterfeited Policy supposedly
9 insured) gave birth to Plaintiffs Linda and Trevor Kelly’s daughter on August 16, 2020.

10 34. Plaintiffs Elizabeth and Richard Henley Montgomery’s surrogate (whom the
11 Counterfeited Policy supposedly insured) gave birth to Plaintiffs Elizabeth and Richard Henley
12 Montgomery’s son in September of 2020.

13 35. Upon information and belief, Plaintiffs and class members did not discover that they were
14 defrauded until after substantial premium payments had been made and substantial medical costs
15 incurred.

16 36. Plaintiffs Mark Angeles, Jeffrey Angeles, Linda Kelly, Trevor Kelly, Elizabeth
17 Montgomery, and Richard Henley Montgomery did not discover that they were defrauded until after the
18 birth of their respective children.

19 37. As a result of the Scheme, Plaintiffs Mark and Jeffrey Angeles have incurred
20 approximately \$60,000 in unpaid medical bills (including for their daughter’s delivery) that were
21 supposedly covered under their non-existent and forged PregnancyCare insurance policy.

22 38. As a result of the Scheme, Plaintiffs Mark and Jeffrey Angeles have paid approximately
23 \$25,000 for medical bills that were supposedly covered under their non-existent and forged
24 PregnancyCare insurance policy.

25 39. As a result of the Scheme, Plaintiffs Linda and Trevor Kelly have incurred approximately
26 \$17,000 in unpaid medical bills (including for their daughter’s delivery) that were supposedly covered
27 under their non-existent and forged PregnancyCare insurance policy.
28

1 40. As a result of the Scheme, Plaintiffs Linda and Trevor Kelly have paid approximately
2 \$10,000 for medical bills that were supposedly covered under their non-existent and forged
3 PregnancyCare insurance policy.

4 41. As a result of the Scheme, Plaintiffs Elizabeth and Richard Henley Montgomery have
5 incurred not less than \$17,000 in unpaid medical bills (including for their son’s delivery) that were
6 supposedly covered under their non-existent and forged PregnancyCare insurance policy.

7 42. As a result of the Scheme, Plaintiffs Elizabeth and Richard Henley Montgomery have
8 paid approximately \$17,000 for medical bills that were supposedly covered under their non-existent and
9 forged PregnancyCare insurance policy.

10 **Defendant & the Captive Reinsurance Relationship**

11 43. The fraud alleged in this Complaint relates to an area of insurance known as “captive
12 reinsurance.” Captive reinsurance programs are complex multi-party arrangements that require
13 specialized expertise and significant underwriting capacity.

14 44. In short, in a captive reinsurance relationship, a broker (who is not licensed to issue
15 insurance policies) uses several intermediaries to form an indirect relationship with an insurance
16 company (an “Issuing Carrier”). This relationship allows the broker to indirectly issue policies to its
17 customers, act as its own “insurance company,” assume part of the risks, and retain additional profits.

18 45. In the type of captive reinsurance program at issue here, an insurance broker or other
19 company (the “Broker/Owner”) forms and owns a captive reinsurance company (the “Captive”). The
20 Captive is ultimately responsible for paying some or all the losses on policies sold by the Broker/Owner.

21 46. A Captive can also be referred to as a reinsurer.¹

22 47. Because Captives are not licensed direct insurers, the Broker/Owner seeks to engage an
23 Issuing Carrier to issue the insurance policies to be resold by the Captive. The apportionment of risk
24 between the Issuing Carrier and the Captive is typically documented in a reinsurance agreement through
25 which the Captive (as the reinsurer) agrees to reimburse the Issuing Carrier for some or all of the losses
26 incurred under the policies.

27 _____
28 ¹ <https://www.captive.com/articles/how-do-captive-insurers-use-reinsurance>.

1 48. Typically, the Captive pays the Issuing Carrier a fee or commission payment for acting as
2 the Issuing Carrier. In addition, the Captive provides collateral to the Issuing Carrier to secure, among
3 other things, the Captive’s obligation to reimburse the Issuing Carrier for any reinsured losses that the
4 Issuing Carrier incurs.

5 49. Typically, the Captive issues or is responsible for issuing the individual insurance
6 policies to its customers.

7 50. Typically, the Captive processes or is responsible for processing the individual insurance
8 claims of its customers.

9 51. These complex transactions are often facilitated by a “captive intermediary,” an entity
10 that assists a Broker/Owner in (1) developing an actuarial model and business plan, (2) forming the
11 Captive, and—most importantly—(3) identifying an Issuing Carrier to issue the policies to be sold by
12 the Broker/Owner and reinsured by the Captive. Ambassador Group LLC d/b/a Ambassador Captive
13 Solutions (“Ambassador”) is such a captive intermediary, founded by Brandon White (“White”) in 2011
14 in Louisville, Kentucky.

15 52. Upon information and belief, Ambassador and/or White created Omega Insurance
16 Company SP, a cell of Performance Insurance Company SPC, which serves as the Captive for the
17 Scheme.

18 53. Upon information and belief, White directly or indirectly owns at least part of
19 Ambassador.

20 54. Upon information and belief, Defendant Omega Family Services was created for the sole
21 purpose of marketing the Counterfeited Policies.

22 55. Omega Family Services marketed the Counterfeited Policies to Plaintiffs, class members,
23 and surrogacy agencies engaged by Plaintiffs and class members.

24 56. Upon information and belief, Omega Family Services received a portion of all premium
25 payments made for the Counterfeited Policies by Plaintiffs and the Class.

26 57. Defendant marketed insurance policies under supposed captive reinsurance programs to
27 Plaintiffs, class members, and surrogacy agencies engaged by Plaintiffs and class members. However,
28 no Issuing Carrier was engaged with respect to the Counterfeited Policies sold to Plaintiffs and class

1 members and no actual insurance policies were issued by any Issuing Carrier for the Counterfeited
2 Policies sold to Plaintiffs and class members. Instead, Ambassador and White forged documents that
3 misled Plaintiffs and class members into believing that Issuing Carriers had issued actual policies in
4 connection with the Counterfeited Policies sold to Plaintiffs and class members.

5 58. Upon information and belief, Ambassador and White forged or caused the forgery of the
6 Counterfeited Policies, which led Plaintiffs, class members, and surrogacy agencies engaged by
7 Plaintiffs and class members into believing that Issuing Carriers had issued policies in connection with
8 the Counterfeited Policies sold to Plaintiffs and class members.

9 59. Upon information and belief, Ambassador and White forged and used a “Quota Share
10 Reinsurance Agreement” that purports to be entered into among an Issuing Carrier and Defendant
11 Performance Insurance Company SPC for the Scheme.

12 60. Upon information and belief, at no time has an Issuing Carrier (1) been engaged to issue
13 insurance policies with respect to the Counterfeited Policies, (2) received premiums, fees, or other
14 compensation in connection with the Scheme, (3) signed any agreements in connection with the Scheme,
15 or (4) provided Ambassador with a quote for this or any other captive program.

16 61. Plaintiffs and class members made premium payments on the Counterfeited Policies
17 believing that such monies (or a portion thereof) were remitted to the supposed Issuing Carrier.
18 However, monies from such premium payments were never remitted to any Issuing Carrier. Instead, the
19 participants of the Scheme retained all such premium payments from Plaintiffs and class members.

20 62. Upon information and belief, Defendant negligently failed to recognize the forged “Quota
21 Share Reinsurance Agreement”. Upon information and belief, Defendant failed to investigate or ask for
22 additional documentation showing that an Issuing Carrier, acting as a licensing front, was backing the
23 PregnancyCare plans.

24 63. Upon information and belief, Defendant’s actions (or lack thereof) in the Scheme caused
25 excessive damages for Plaintiffs and Class members by preventing them from obtaining alternative
26 insurance or even negotiating a “self-pay rate” with the medical providers while also leaving Plaintiffs
27 and Class members responsible for enormous medical bills.

28 **The Misrepresentations**

1 64. Omega Family Services negligently made several misrepresentations to Plaintiffs, class
2 members, and surrogacy agencies engaged by Plaintiffs and class members about the Counterfeited
3 Policies, which Omega Family Services asserted provided surrogacy insurance to Plaintiffs (the
4 “Misrepresentations”).

5 65. Upon information and belief, several of the Misrepresentations came in late 2018 in the
6 form of numerous documents that Omega Family Services sent to the Surrogacy Agencies engaged by
7 Plaintiffs, and which information was then passed on to Plaintiffs prior to their purchase of
8 PregnancyCare policies:

- 9 a) Omega Family Services distributed to the Surrogacy Agencies its PregnancyCare FAQ
10 Flyer which stated that “PregnancyCare is licensed and insured by AXA [an Issuing
11 Carrier] in all 50 states and issued by Omega Insurance Company.... The plan will take
12 care of all appropriate claims processing and payments. When using a Non-Participating
13 Provider, maternity services are still covered 100%, but the GC may need to submit a
14 claim form.... When the GC is using a Participating Provider for maternity services, there
15 are no out-of-pocket expenses. When she uses a Non-Participating Provider, there are two
16 possible scenarios: (1) the provider asks her to pay for the services, and then she submits
17 a claim form to the insurance company for reimbursement; or (2) the provider bills her,
18 and she submits a claim form to the insurance company with the bill so the insurance
19 company will pay the provider directly.” (*See Ex. B.*) The Surrogacy Agencies then
20 passed this information on to their respective client/Plaintiff.
- 21 b) Omega Family Services distributed to the Surrogacy Agencies its PregnancyCare
22 brochure which stated “The monthly premium covers 100% of maternity services:
23 prenatal, delivery and postpartum services with Participating Providers. PregnancyCare
24 offers an extensive nationwide network with over 700,000 providers in all 50 states” and
25 displayed the mark of Issuing Carrier AXA. (*See Ex. C.*) The Surrogacy Agencies then
26 passed this information on to their respective client/Plaintiff.
- 27 c) Omega Family Services distributed to the Surrogacy Agencies the PregnancyCare Plan
28 Document and Summary Plan Description (Effective: November 01, 2018) bearing the
 AXA mark and stating that “THIS PLAN DOCUMENT AND SUMMARY PLAN

1 DESCRIPTION (‘Plan Document’), made by AXA (the ‘Company’) as of November 01,
2 2018, hereby sets forth the provisions of ‘Pregnancy Care’ (the ‘Plan’).” (See Ex. D, at 1-
3 3.) The Surrogacy Agencies then passed this information on to their respective
4 clients/Plaintiffs.

5 66. Several of the Misrepresentations came in the form of communications directly from
6 Omega Family Services to Plaintiffs in 2019.

7 67. In multiple emails to Plaintiff Linda Kelly in June and July of 2019, Defendant stated that
8 “The plan covers 100% of all pregnancy related medical services in or out of the network” and that all
9 claims “are covered at 100% when used for maternity. The only thing the member will have to do is to
10 request the OB/GYN to submit a prior authorization to member services.” (See Exs. E, F.)

11 68. Upon information and belief, Omega Family Services made misrepresentations to all
12 class members and class members’ surrogacy agencies (the “Class Misrepresentations”) that were
13 materially similar to the Misrepresentations. Upon information and belief, the Class Misrepresentations
14 were passed from class members’ surrogacy agencies to class members.

15 69. Defendant is a marketing company and a professional supplier of information.

16 70. Defendant understood, intended, and expected that the Misrepresentations and Class
17 Misrepresentations that it made about PregnancyCare to Plaintiffs’ and Class Members’ surrogacy
18 agencies would be communicated by said surrogacy agencies to Plaintiffs and Class Members.

19 71. The Misrepresentations that Defendant made about the Counterfeited Policies to
20 Plaintiffs’ surrogacy agencies were communicated by said surrogacy agencies to Plaintiffs.

21 72. Upon information and belief, the Class Misrepresentations that Defendant made about
22 PregnancyCare to Class Members’ surrogacy agencies were communicated by said surrogacy agencies to
23 all Class Members.

24 73. Defendant understood, intended, and expected that Plaintiffs and Class Members would
25 reasonably rely on the Misrepresentations and Class Misrepresentations that Defendant made to their
26 surrogacy agencies about the Counterfeited Policies.

27 74. Plaintiffs and Class Members reasonably relied on the Misrepresentations and Class
28 Misrepresentations that Defendant made to their surrogacy agencies about the Counterfeited Policies in
deciding to purchase the Counterfeited Policies.

1 the members of the Class, Plaintiffs believe the Class contains over 700 members, and the California
2 Class contains over 500 members. Class members may be identified through objective means, including
3 through Defendant's records. Class members may be notified of the pendency of this action by
4 recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic
5 mail, internet postings, social media, and/or published notice.

6 **83. Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3).** Consistent with Rule 23(a)(2) and
7 with 23(b)(3)'s predominance requirements, this action involves common questions of law and fact as to
8 all members of the Class, which predominate over any questions affecting individual members of the
9 Class. Such questions of law and fact common to the Class include, but are not limited to:

- 10 a. Whether Defendant had a legal duty to ensure that the information that Defendant
11 disseminated to Class members was not materially inaccurate or misleading;
- 12 b. Whether documents and statements publicly disseminated by Defendant relating to
13 their fraudulent "insurance" policies contained materially false and misleading
14 statements and representations;
- 15 c. Whether Defendant acted negligently in disseminating materially false or misleading
16 information in connection with the sale of the fraudulent "insurance policies";
- 17 d. Whether Defendant's conduct, including its failure to act, resulted in or was the
18 cause-in-fact or proximate cause of Plaintiffs' and Class members' damages;
- 19 e. Whether Plaintiffs and Class members have sustained damages by reason of
20 Defendant's misrepresentations and the proper measure of such damages;
- 21 f. Whether Plaintiffs and Class members are entitled to relief, including equitable
22 relief;
- 23 g. Whether the circumstances of the Scheme would make it unjust for Defendant to
24 retain the benefit Plaintiffs and Class members conferred upon Defendant; and
- 25 h. Whether Defendant's Misrepresentations and Class Misrepresentations inflicted
26 substantial injuries upon Plaintiff and Class members that (a) were not outweighed
27 by any countervailing benefits to consumers or competition and (b) could not have
28 been reasonably avoided by Plaintiffs and class members.

1 84. **Typicality. Fed. R. Civ. P. 23(a)(3).** Consistent with rule 23(a)(3), Plaintiffs’ claims are
2 typical of the claims of the members of the Class. Plaintiffs purchased counterfeited and nonexistent
3 “insurance policies” from Defendant. Plaintiffs’ damages and injuries are akin to other Class members,
4 and Plaintiffs seek relief consistent with the relief of the Class members.

5 85. **Adequacy. Fed. R. Civ. P. 23(a)(4).** Consistent with Rule 23(a)(4), Plaintiffs are
6 adequate representatives of the Class because Plaintiffs are members of the Class and are committed to
7 pursuing this matter against Defendant to obtain relief for the Class. Plaintiffs have no conflicts of
8 interest with Class members. Plaintiffs’ Counsel are competent and experienced in litigating consumer
9 class actions, including insurance matters. Plaintiffs intends to vigorously prosecute this case and will
10 fairly and adequately protect the Class’s interests. Plaintiffs’ claims arise out of the same common
11 course of conduct giving rise to the claims of the other members of the Class. Plaintiffs’ interests are
12 coincident with, and not antagonistic to, those of the other Class members.

13 86. **Superiority. Fed. R. Civ. P. 23(b)(3).** Consistent with Rule 23(b)(3), a class action is
14 superior to any other available means for the fair and efficient adjudication of this controversy, and no
15 unusual difficulties are likely to be encountered in the management of this class action. The
16 quintessential purpose of the class action mechanism is to permit litigation against wrongdoers even
17 when damages to individual Plaintiffs may not be sufficient to justify individual litigation. Here, the
18 damages suffered by Plaintiffs and individual Class members are relatively small compared to the
19 burden and expense required to individually litigate their claims against Defendant, and thus, individual
20 litigation to redress Defendant’s wrongful conduct would be impracticable. Individual litigation by each
21 Class member would also strain the court system. Individual litigation creates the potential for
22 inconsistent or contradictory judgments and increases the delay and expense to all parties and the court
23 system. By contrast, the class action device presents far fewer management difficulties and provides the
24 benefits of a single adjudication, economies of scale, and comprehensive supervision by a single court.

25 87. **Injunctive and Declaratory Relief.** Class certification is also appropriate under Rule
26 23(b)(2) and (c). Defendant, through its uniform conduct, acted or refused to act on grounds generally
27 applicable to the Classes as a whole, making injunctive and declaratory relief appropriate to the Classes
28 as a whole.

1 88. Likewise, particular issues under Rule 23(c)(4) are appropriate for certification because
2 such claims present only particular, common issues, the resolution of which would advance the
3 disposition of this matter and the parties' interests therein. Such particular issues are set forth in
4 Paragraph 80(a)–(h) above.

5 89. Finally, all members of the proposed Classes are readily ascertainable. Defendant has
6 access to information regarding the organizations which purchased its Counterfeited Policies. Using this
7 information, Class members can be identified and their contact information ascertained for the purpose
8 of providing notice to the Classes.

9
10 **FIRST CLAIM FOR RELIEF**

11 **Negligent Misrepresentation**

12 *(On behalf of Plaintiffs and the Class, or Alternatively, on Behalf of Plaintiffs and the California
13 Class)*

14 90. Plaintiffs and Class members restate and reallege the preceding paragraphs as if fully set
15 forth herein.

16 91. Defendant is a professional supplier of information.

17 92. Defendant had a legal duty to make and ensure that accurate representations were made
18 to Plaintiffs and Class Members regarding the Counterfeited Policies sold under the Scheme.

19 93. Defendant negligently made, allowed, encouraged, or enabled to be made the
20 Misrepresentations to Plaintiffs and Class members.

21 94. Defendant negligently made, allowed, encouraged, or enabled to be made material
22 misrepresentations to Plaintiffs and Class members regarding the Counterfeited Policies sold under the
23 Scheme.

24 95. Defendant breached a legal duty in negligently making inaccurate representations to
25 Plaintiffs, Class Members, and surrogacy agencies engaged by Plaintiffs and Class Members regarding
26 the Counterfeited Policies sold under the Scheme.

27 96. Defendant breached a legal duty in negligently allowing inaccurate representations to be
28 made to Plaintiffs, Class Members, and surrogacy agencies engaged by Plaintiffs and Class Members
regarding the Counterfeited Policies sold under the Scheme.

1 97. Defendant understood, intended, and expected that the misrepresentations that it made
2 about the Counterfeited Policies to Plaintiffs' and Class Members' surrogacy agencies would be
3 communicated by said surrogacy agencies to Plaintiffs and Class Members.

4 98. Defendant understood, intended, and expected that Plaintiffs and Class Members would
5 reasonably rely on the misrepresentations that Defendant made to their surrogacy agencies about the
6 Counterfeited Policies.

7 99. Plaintiffs and Class Members reasonably relied on the misrepresentations that Defendant
8 made to their surrogacy agencies about the Counterfeited Policies.

9 100. Defendant's misrepresentations and actions caused damages to Plaintiffs and Class
10 members.

11 101. Defendant's actions were the cause-in-fact and proximate cause of Plaintiffs' and Class
12 Member's damages.

13 **SECOND CLAIM FOR RELIEF**

14 **Unjust Enrichment**

15 *(On behalf of Plaintiffs and the Class, or Alternatively, on Behalf of Plaintiffs and the California*
16 *Class)*

17 102. Plaintiffs and Class members restate and reallege the preceding paragraphs as if fully set
18 forth herein.

19 103. Upon information and belief, Defendant received a portion of all premium payments
20 made by Plaintiffs and Class members for the Counterfeited Policies.

21 104. In paying insurance premiums for the Counterfeited Policies, Plaintiffs and Class
22 members conferred a benefit (the "Benefit") upon Defendant.

23 105. Defendant accepted, retained, and appreciated the value of the Benefit.

24 106. The retention of the Benefit by Defendant would be at the expense of Plaintiffs and Class
25 Members.

26 107. The circumstances of the Scheme would make it unjust for Defendant to retain the
27 Benefit Plaintiffs and Class members conferred upon Defendant.

28 **THIRD CLAIM FOR RELIEF**

Violation of California Unfair Competition Law-Unfair Business Practice

Cal. Bus. & Prof. Code § 17200 et seq.

(On behalf of Plaintiffs and the California Class)

1
2 108. Plaintiffs and Class members restate and reallege the preceding paragraphs as if fully set
3 forth herein.

4 109. Defendant is a “business” as defined by § 17200.

5 110. California Business and Professions Code section 17200 et seq. prohibits acts of unfair
6 competition, which includes unfair business practices. The unfair conduct detailed herein was directed at
7 California consumers, residents, and citizens.

8 111. Courts have developed three separate tests to determine whether conduct qualifies as
9 “unfair” for the purposes of the UCL. *Ehret v. Uber Techs., Inc.*, 68 F. Supp. 3d 1121, 1137 (N.D. Cal.
10 2014). One definition is a practice that “offends an established public policy or when the practice is
11 immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.” *Morgan v. AT&T*
12 *Wireless Servs., Inc.*, 177 Cal. App. 4th 1235, 1254 (2009). A business practice may also be unfair if
13 “(1) the consumer injury is substantial, (2) the injury is not outweighed by any countervailing benefits to
14 consumers or competition, and (3) the injury is one that consumers themselves could not reasonably
15 have avoided.” *Id.* at 1255. In a third approach, “California courts balance the ‘impact on [] its alleged
16 victim’ against ‘the reasons, justifications, and motives of the alleged wrongdoer.’” *Ehret*, 68 F. Supp.
17 3d at 1137 (quoting *Plumlee v. Pfizer, Inc.*, 2014 WL 4275519, at *5 (N.D. Cal. Aug. 29, 2014)).

18 112. Defendant, by making the Misrepresentations and Class Misrepresentations, engaged in
19 unfair business acts and practices.

20 113. Defendant’s Misrepresentations and Class Misrepresentations “offend[] an established
21 public policy” and are “immoral, unethical, oppressive, unscrupulous or substantially injurious to
22 customers.” *See Morgan*, 177 Cal. App. 4th at 1254.

23 114. Defendant’s “unfair” practices were designed to induce Plaintiffs and Class Members to
24 purchase and make premium payments for the Counterfeited Policies.

25 115. As a direct and proximate cause of Defendant’s Misrepresentations and Class
26 Misrepresentations, Plaintiffs and Class Members have suffered actual damages.

27 116. Defendant’s Misrepresentations and Class Misrepresentations have inflicted substantial
28 injuries upon Plaintiffs and Class members that (a) were not be outweighed by any countervailing
benefits to consumers or competition and (b) could not have been reasonably avoided by Plaintiffs and
class members.

JURY DEMAND

Plaintiffs, on behalf of themselves and the Class of all others similarly situated, hereby demand a trial by jury on all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Respectfully submitted,

Dated: October 11, 2021

By: /s/ Michael F. Ram
Michael F. Ram

**MORGAN & MORGAN
COMPLEX LITIGATION GROUP**

Michael F. Ram (SBN 104805)
mram@forthepeople.com
Marie N. Appel (SBN 187483)
mappel@forthepeople.com
711 Van Ness Avenue, Suite 500
San Francisco, CA 94102
Telephone: (415) 358-6913
Facsimile: (415) 358-6293

Ra O. Amen (*Pro Hac Vice* application pending)
ramen@forthepeople.com
201 N. Franklin Street, 7th Floor
Tampa, Florida 33602
Telephone: (813) 223-5505
Facsimile: (813) 223-5402

NELSON & FRAENKEL LLP

Gretchen M. Nelson (SBN 112566)
gnelson@nflawfirm.com
Gabriel S. Barenfeld (SBN 224146)
gbarenfeld@nflawfirm.com
601 So. Figueroa Street, Suite 2050
Los Angeles, California 90017
Telephone: (213) 622-6469
Facsimile: (213) 622-6019

**STEWART, MITTLEMAN & O'ROURKE,
L.L.C.**

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Mark D. Mittleman (*Pro Hac Vice* application pending)
mdm63105@aol.com
222 South Central Avenue, Suite 202
Saint Louis, Missouri 63105
Telephone: (314) 863-8484
Facsimile: (314) 863-5312

*Counsel for Plaintiffs
and the Proposed Class*

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